Supreme Court requires the accounts to be verified by affidavit, numbered consecutively and left and filed in the Registry. It is particularly specified in this rule that the accounts shall be referred to by the affidavit as an exhibit. It must not be annexed or referred to as annexed thereto, (see also Order 38 rule 23).

Order 55 rule 75 provides that the prescribed form shall be used for the respective purposes therein mentioned with such variations as circumstances may require. At this stage a comparison should be made with the corresponding rule in the Annual Practice. The Annual Practice refers to forms Nos. 11-24 in Appendix I. Now it is to be observed that the marginal note in the 1957 Rules of the Supreme Court, reference was made to these very forms Nos. 11-24 in Appendix I. There can therefore be no doubt whatsoever that while our rule prescribes generally for the adoption of the forms prescribed, this prescription has a particular reference to the forms Nos. 11-24 of Appendix I. A reference to the Annual Practice will indicate the particular forms for the compilation of the accounts.

On December 15, 1973 an affidavit was affirmed by the receiver that "I have this day filed a Statement of Accounts marked 'A' now produced and shown to me which according to the best of my knowledge, information and belief sets out the receipts and payments of Wah Hup Engineering Works from September 15, 1969 to November 17, 1973." A comparison with Form No. 11 of Appendix I in Part 4 of the Annual Practice (1962 A.P. page 2442) will indicate how completely inadequate the affidavit of the receiver is. But I am prepared to accept that this affidavit did, however inadequately, verify the statement of accounts. But the accounts submitted were nothing more or less than a chronological order of the receipts and payments of the firm concerned. It is, in other words, a reproduction of a journal. The entries were unnumbered, but apparently it was conceded by all parties that this difficulty could be got over by numbering the items as they were gone through. The accounts were however nowhere near the forms set out in the rules (see 1962 A.P. pages 2446-2447). There is further no summary of the accounts as in the forms provided. Under the circumstances, I am completely at a loss to understand how they can be justified as being variations required, justified or permitted by the circumstances. No circumstances had been shown to justify the variations when the variations themselves were a complete departure from the rules.

There should, in my view, be some adherence to the rules of court, unless required by circumstances, if there is to be any meaning or purpose in such rules.

It should, I think, be realised by practitioners as well as by judges that while strict and slavish adherence to forms and rules can sometimes hinder the administration of justice, these forms and rules should not be disregarded for no reason whatsoever, since they embody the experience of the courts over the years in the cause of speedy and efficient administration of justice.

The appeal against the order of the learned Senior Assistant Registrar is therefore allowed and an order will be made that the receiver do file proper accounts in accordance with the Rules within two months from the date hereof. There will be a further order that all parties file their respective surcharges and falsifications within one month from the filing of such accounts. I see that the third defendant in applying for these orders had asked for costs to be in the cause but I think it is necessary that costs of the appeal, in view of the resistence to the application before the Senior Assistant Registrar and to the appeal, be provided for. I therefore order that the third defendant shall have his costs from the Estate but that all the parties should bear their own costs.

Appeal allowed.

Solicitors: *Mah-Kok & Din; Skrine & Co.; Allen & Gledhill; Ng Ek Teong & Partners.*

PUBLIC PROSECUTOR v. MOHAMED BIN MAJID

[O.Cr.J. (Harun J.) May 14, 1976]
[Kuala Lumpur — Raub Criminal Trial No. 4 of 1975]

Criminal Law and Procedure — Rape — Allegation of rape proven — Identification of assailant by prosecutrix — Corroboration — Whether safe to convict without corroboration.

Penal Code, s. 376 — Rape — Corroboration — Whether safe to convict without corroboration.

The prosecutrix was raped whilst working on a rubber estate some distance from her house. Consequent upon this, the prosecution sought to prove that the accused was the assailant on the following grounds: (i) the prosecutrix identified the accused at an Identification Parade on March 15, 1975; (ii) she identified him again in court; and (iii) he was seen near the scene of the crime shortly after it was committed.

Evidence showed that the identification parade was held 4 days after the incident. The other boys in the parade were of lighter skin than the accused whose complexion was very dark. At the trial the prosecutrix pointed to the dock when the accused was bending down and looking at the floor.

Held: (1) in a prosecution for rape it is unsafe to convict unless there is corroboration on the allegation of rape and corroboration on the identification of the assailant;

(2) the identification parade was unfair to the accused and the subsequent identification in court was of little significance.

Cases referred to:-

(1) *Public Prosecutor* v. *Mardai* [1950] M.L.J. 33.
(2) *Balwant Singh* v. *Public Prosecutor* [1960] M.L.J. 264.
(3) *Ah Mee* v. *Public Prosecutor* [1967] M.L.J. 220.
(4) *Din* v. *Public Prosecutor* [1964] M.L.J. 300.
(5) *Regina* v. *Trigg* [1963] 1 W.L.R. 305.

CRIMINAL TRIAL.

Abdul Kadir bin Musa (Deputy Public Prosecutor) for the Public Prosecutor.

Wai Wah Kwai (*Ajit Singh* with him) for the accused.

Harun J.: In this case the accused was charged with rape. At the close of the case for the prosecution I held that the prosecution had failed to establish a *prima facie* case and accordingly acquitted and discharged the accused. My reasons are as follows:

There were two issues at the trial. Firstly, whether the prosecutrix was raped and secondly, whether it was the accused who committed the offence.

The story of the prosecutrix (PW8) was that on the morning of March 11, 1975 she went to tap rubber on an estate some distance from her house. She went by car with her mother, brother and brother-in-law. They worked in different places. She began tapping rubber at about 6.00 a.m. and at about 10.15 a.m. she began collecting latex which she would normally finish by about 11.00 a.m. When she was collecting latex a Malay youth came up to her and caught her by the neck. She yelled and shouted for help. He closed her mouth with his hand. She held on to a rubber tree with both her arms in an embracing position but he pulled her away bruising her arms. he pushed her to the ground, undressed her, then removed his own trousers and raped her. She decided to submit to sexual intercourse rather than put up a struggle as she was afraid that her assailant might strangle her. After he had accomplished his purpose, he got up, put on his trousers and said before leaving "Not to tell people about this". She then got up, put on her dress and went to the mangle shed with the latex she had already collected. At the mangle shed she told a woman (PW13) about the incident and this woman spoke to a Malay in the smoke house. She remained at the mangle shed until the arrival of her family. She did not tell her mother as she was afraid that she might be scolded. They returned home and she began crying. Her mother asked her why and she told her mother about the incident that morning. Her family took her to the Police Station where she made a report about the rape at 3.35 p.m. that same day.

There was medical evidence that her arms were bruised which is consistent with her story that she put up an initial struggle by holding on to the rubber tree when first attacked. She had no injuries on her private parts. There was a conflict of medical opinion regarding her hymen, according to one doctor (PW1) it was intact but according to another doctor (PW2) there was a recent small tear at 3 o'clock position suggesting an attempt at penetration. I accepted the second doctor's opinion as she appeared to be more experienced in examining such cases. PW13 denied the prosecutrix reported to her about the rape or that she knew that the girl had been raped at all. The Malay PW13 spoke to was never called. However, on the evidence of the bruises on her arms; the blood and seminal stains on her panties; the recent tear of her hymen; the promptness in reporting to the Police and the manner in which she was attacked, I found as a fact that sexual intercourse did take place without her consent and accordingly held that the allegation of rape was proved.

The other question is whether it was the accused who committed the offence. To prove identification the prosecution relied on the following facts:

(i) The prosecutrix identified the accused at an Identification Parade on March 15, 1975;

(ii) She identified him again in Court; and

(iii) He was seen near the scene of the crime shortly after it was committed.

The accused is a Malay youth aged 21 years. The prosecutrix is a Chinese girl aged 16 years. They live in different kampungs but the girl taps rubber in an estate near accused's kampung. The accused is a stranger to the prosecutrix. She hardly speaks the Malay Language. According to her, she had seen the accused on three occasions prior to the incident when he passed by the estate she was working but they never spoke to each other. Yet she did not describe the accused to anyone immediately after the incident or even when she made the Police Report some hours later. PW6, a family friend of the prosecutrix who also acted as Interpreter at the Police Station when she was making her report said the prosecutrix never described the man who had raped her yet he and the others knew that she was going to make a report of rape.

Nonetheless, there is evidence that at 5.45 p.m. the same day a detective (PW11) was asked by Inspector Cheah (PW9) to go to the kampung and look for a young Malay with long hair, medium build and dark-complexion. He went with other detectives to the kampung and returned to the Police Station less than an hour later with eight young Malays all fitting the description. Unfortunately, the Identification Parade was not held then and there although the prosecutrix was in the Police Station when these young boys were brought in. The accused was one of these eight boys. He was detained after Inspector Cheah interrogated all eight of them. The other seven were released. There is no evidence why the accused had to be the one to be detained. He had no injuries. There was no description of the clothes he was wearing at the time he was alleged to have raped the prosecutrix. His clothes were sent to the Government Chemist but no blood or seminal stains were found on them although such stains were found on the clothings of the prosecutrix.

The Identification Parade was held on March 15, 1975 at Bentong Police Station four days after the incident. Apart from the accused, nine other Malays from Bentong Town took part in the parade. The town boys were of lighter skin than the accused whose complexion is very dark. It was obvious that the accused was an odd person at that parade. There was no reason why the parade was held at Bentong nor was there any reason why it was not held at the Lurah Bilut Police Station on March 11, 1975. I find as a fact that the Identification Parade was unfair to the accused.

The subsequent identification in court is of little significance. In fact at the trial she pointed to the dock when the accused was bending down and looking at the floor.

The only other evidence connecting the accused with the offence is the evidence of a fishmonger (PW12) who gave a lift in his car to the accused and another Malay at 10.30 a.m. that morning. According to the prosecutrix, the incident happened after 10.15 a.m., yet the accused was at the road junction with a friend more than 1½ miles away at 10.30 a.m. looking calm and his usual self. The Malay who was with the accused, although known to the fishmonger, was never called as a witness or explanation given why he was not called. He could have at least told us for how long he had been with the accused; where he met the accused that morning; and the conduct of the accused before stopping the fishmonger for a lift. At any

rate, it was obvious that the accused was not running away since he was back in his kampung that same afternoon when the Police arrested him. The accused was not the only Malay youth who passed the estate where the prosecutrix was working on previous days. Other Malay youths did so. Even on the previous occasions, if believed, the accused never got close to the prosecutrix. Apart from saying that it was the accused, the prosecutrix was not able to identify the accused by any other way, a mark on his body or some peculiar feature about his face or even the colour and type of his clothes. Considering the evidence on identification as a whole I could not come to the irresistible conclusion that it was the accused and the accused only who raped the prosecutrix.

At the close of the case for the prosecution I found there was corroboration on the allegation of rape but there was no independent corroboration regarding the identification of the accused. In *Public Prosecutor* v. *Mardai*,[1] Spenser-Wilkinson J. (as he then was) said:

"Whilst there is no rule of law in this country that in sexual offences the evidence of the complainant must be corroborated; nevertheless it appears to me, as a matter of common sense, to be unsafe to convict in cases of this kind unless either the evidence of the complainant is unusually convincing or there is some corroboration of the complainant's story. It would be sufficient, in my view, if that corroboration consisted only of a subsequent complaint by the complainant herself provided that the statement implicated the accused and was made at the first reasonable opportunity after the commission of the offence."

Here the prosecutrix was neither unusually convincing nor did she implicate the accused at the first opportunity or even in her Police report. In *Balwant Singh* v. *Public Prosecutor*,[2] Rigby J. (as he then was) said:

"The sole evidence of identification in this case is that of the complainant herself."

"He then goes on to say that such evidence was corroborated by the complainant at the identification parade. Now, it is elementary, of course, that a witness cannot corroborate his own testimony and that independent evidence is required to constitute corroboration."

In *Ah Mee* v. *Public Prosecutor*,[3] Ong Hock Thye F J. (as he then was) in delivering the judgment of the Federal Court in a case of a girl rubber tapper alleging rape said:

"With respect, corroboration in the legal sense connotes some independent evidence of some material fact which implicates that accused person and tends to confirm that he is guilty of the offence."

I am aware of the decision in *Din* v. *Public Prosecutor*[4] where Thomson L.P. (as he then was) in delivering the judgment of the Federal Court said:

"Here, however, the necessity for corroboration, generally speaking, is not so imperative with regard to the identity of her assailant as to the fact of the offence itself. It is here that there is danger. The temptations of a woman to exaggerate an act of sexual connection are well known and manifold. But though it might be dangerous to find the factum of rape on the uncorroborated evidence of the prosecutrix once that factum of rape is established there seems to be nothing left to support the view that her identification of the assailant calls for corroboration any more than it would in relation to any other type of offence."

In that case the accused was arrested the following day after the commission of rape and the day after the prosecutrix identified him without hesitation at a police identification parade. In her evidence she said she recognised him by his face and by the mark on his shoulder as the accused though a stranger to the prosecutrix was naked when he raped her. The defence was mistaken identity. With respect, the decision in that case was on the facts of the case and is not authority for the proposition that once the factum of rape is established corroboration is no longer required for the identification of the assailant. I find support for this view in the decision of the Court of Criminal Appeal in *Regina* v. *Trigg*,[5] where the fact that the complainant was raped was not challenged and the only issue was as to the identity of the assailant. In that case the complainant and two other girls were walking along the road when they were approached by a man on a motor-cycle. He invited each of the girls to go with him for a ride on the motor-cycle and the complainant, eventually accepting the invitation, drove off with him. On her return home, the complainant alleged that, after taking her into the country, the man raped her and then drove away. She was taken home by a passing motorist and was soon afterwards examined by a doctor who came to the conclusion that she had been raped. At an identification parade held ten days later, the three girls identified the accused as being the man in question. The evidence, however, showed that the written description of the assailant made by the complainant to the police did not accord with the accused's known characteristics. In the course of his judgment, Ashworth J. said:

"In *Reg.* v. *Sawyer* ((1959) 43 Cr. App. R. 187, C.C.A.) in this court, the headnote reads: 'On an charge of a sexual offence it is essential that the summing-up should contain a warning on corroboration and, if the alleged victim was a child, on the approach to the evidence of children generally on the lines laid down in *Campbell* ([1956] 2 Q.B. 432; [1956] 3 W.L.R. 319; [1956] 2 All E.R. 272, C.C.A.) . . . even though the fact of the commission of the offence is not disputed and the only issue is one of identity. In *Reg.* v. *Sawyer*, which bears some similarity to the facts of the present case, the issue being one of identity only, the deputy chairman had in terms said to the jury that it was unnecessary to warn them about corroboration for that reason. This court said: 'The court feels that that is wrong, and that in such a case as this the ordinary warning must be given to a jury of the danger of acting on the uncorroborated evidence of the complainant.'

The matter again came before this court in the following year in *Reg.* v. *Clynes*, ((1960) 44 Cr. App. R. 158, C.C.A.) where these words appear: 'It was submitted by Mr. Montgomery that, in a case where the issue is one of identity and where there is no dispute as to the actual assault, it is not necessary for the court to give a direction on corroboration at all. That is not the view of this court, nor was it the view of this court in *Sawyer* . . . where the charge was one of a different sexual offence, and the only issue was identity, and the court stressed the necessity for a warning on corroboration.'

In these circumstances, it is quite impossible to give effect to an argument but faintly put forward by Mr. Parker for the prosecution that this issue was still open. In the view of this court, these decisions establish quite plainly that, in a sexual case of this sort, the jury must be warned of the danger of acting on the complainant's evidence unless there is corroboration."

I therefore hold that in a prosecution for rape it is unsafe to convict unless there is —

(i) corroboration on the allegation of rape; and

(ii) corroboration on the identification of the assailant.

Order accordingly.

Solicitors: *Hisham, Sobri & Kadir.*